

REMARKS/ARGUMENTS

Claims 17-23, 27-32 and 35-71 are pending. Claims 32, 51, 54, 56 and 59 are amended. Claims 68-71 are newly submitted.

The present amendment is further to the amendment filed concurrently with the filing of the RCE of the present application.

In response to the Office Action dated June 12, 2007, favorable reconsideration and allowance of the present application are respectfully requested. The Office Action rejected certain claims as indefinite under 35 USC §112. In addition, the claims were rejected based on prior art, relying upon WO 97/14326 (Polegato) as the primary reference, and additionally relying upon USP 6,477,789 to Cheng, and USP 6,508,015 to Rauch. For reasons set forth in detail below, it is respectfully submitted that this application is now in condition for allowance.

Applicants thank Examiner Kavanaugh for the courtesies extended to Applicants' representatives during a personal interview conducted November 26, 2007. During the interview, the present invention, present claims and prior art were discussed. In addition, the examiner was provided with examples of the present invention and an arrangement as disclosed in the WO '326 reference. As discussed during the interview, and as also set forth below, it is respectfully submitted that each of the present claims patentably distinguishes over the prior art, and therefore, this application is now in condition for allowance.

In accordance with the present invention, Applicants have recognized an advantageous arrangement which provides improved breathability while also providing sufficient support for a waterproof and breathable sole.

During the interview, the examiner initially expressed some confusion with regard to the terms "macroportion" and "macroperforation" as utilized in the claims. As discussed

during the interview, by way of example, figure 1 of the present application illustrates an example of an arrangement according to the invention. As shown in this arrangement, the tread can have enlarged openings, or in other words, macroperforations 16, with two such macroperforations 16 shown in figure 1. Such enlarged openings or macroperforations 16 in the tread provide access or expose macroportions of a supporting layer 11, so that a membrane that is positioned above the supporting layer is able to provide breathability through an enlarged area of the shoe.

In accordance with one of the aspects of the invention, a supporting layer is provided, and includes at least one macroportion, and this macroportion is exposed to outside of the tread through the at least one macroperforation of the tread, and the exposed area is on the order of at least one square centimeter.

Each of claims 1, 32, and 51 (the only pending independent claims) recites a supporting layer having at least one macroportion, with the tread including at least one macroperforation exposing the area (of the macroportion of the supporting layer) on the order of at least one square centimeter.

It is respectfully submitted that the WO '326 (Polegato) reference does not disclose or suggest such an arrangement. First, it is respectfully submitted that the WO '326 arrangement does not include a tread having macroperforations which expose macroportions of a supporting layer on the order of at least one square centimeter. The WO '326 arrangement provides small openings extending through the tread. Further, because the openings and the '326 reference are small, there is no need for a supporting layer.

The Office Action refers to protective layer 106 as a supporting layer, however, it is respectfully submitted that such a layer is a protective layer, not a supporting layer. In accordance with one of the features of the invention, the supporting layer provides support

for the shoe, so that satisfactory support is provided despite the enlarged openings provided by the macroperforations of the tread.

During the interview, the Examiner indicated that the layer 106 could be considered as a supporting layer, in that the term “supporting layer” could be considered relative. However, Applicants respectfully disagree, because the ‘326 reference does not disclose or describe the layer 106 as a supporting layer, but instead, describes the layer as a protective layer. Moreover, it should be noted that the present specification describes a protective layer separate and apart from the supporting layer. By way of example, p.6, lines 25-27 describes a protective layer 110a, which is separate from the supporting layer 110 (p. 6, line 12).

Moreover, even accepting layer 106 of the ‘326 reference as a supporting layer, there is no disclosure or suggestion of a tread having macroperforations which expose an area on the order of at least one square centimeter of macroportions of a supporting layer to an exterior of the tread. Accordingly, it is submitted that the WO ‘326 reference fails to disclose or suggest the features set forth in each of the independent claims.

In addition to the features discussed above, as discussed during the interview, the present independent claims each include additional features which are not disclosed or suggested by the cited references. Specifically, the last paragraph of claim 17 additionally recites (emphasis added):

said tread being joined hermetically to said membrane and to said supporting layer at least at a perimeter of said at least one macroportion made of net, felt or other diffusely perforated material.

By way of example, support for this feature is provided at p.6, lines 9-11 of the present specification. This feature is not suggested by the cited references, and is advantageous in a number of respects. First, particularly where an enlarged macroperforation exposes a

macroportion of the supporting layer to provide access (for breathability) to the membrane, it is important to provide a seal about the macroportion so that, while providing an enlarged area for breathability, both vapor-permeable and waterproofness are ensured. In accordance with one of the advantageous features of the present invention, this is achieved by sealing the tread to the membrane. Further, in accordance with a further feature as set forth in the last paragraph of claim 17, by providing a hermetic seal or joining of both the membrane and the supporting layer to the tread, better support is ensured. Specifically, with the tread coupled to the supporting layer, better integrity (in terms of its support) of the supporting layer is assured by anchoring of the supporting layer to the tread about the macroportion.

For the above reasons, it is respectfully submitted that claim 17 patentably distinguishes over WO'326 reference. Moreover, it is submitted that even the collective teachings of the cited references fail to suggest the combined features of claim 17.

In addition to the features relating to the supporting layer having at least one macroportion exposed to outside of the tread by macroperforation of the tread as discussed earlier, independent claim 32 additionally recites (emphasis added):

an upper that is assembled on an assembly insole that is coupled to a layer made of a diffusely perforated material, which provides a means for hermetic high-frequency welding of said membrane to said upper from above,--- .

By way of example, such an arrangement shown in figure 9, and the sealing of the upper utilizing the additional layer 122 is described at p.7, lines 18-21 of the present specification.

The WO '326 reference and the remaining cited references additionally fail to disclose or suggest this additional feature set forth in claim 32.

Finally, also in addition to the features relating to the supporting layer, macroportion and macroperforation discussed earlier, claim 51 additionally recites (emphasis added):

wherein the tread is hermetically sealed to said membrane about a periphery of said at least one macroportion.

This feature is also not disclosed or suggested by the '326 reference or the remaining references, particularly when considered in combination with the other features set forth in claim 51.¹

It is respectfully submitted that the remaining cited references fail to overcome the deficiencies of the WO '326 reference. For example, Cheng and Rauch fail to overcome the deficiencies of the '326 reference with regard to the hermetical sealing features set forth in each of the independent claims, with the tread hermetically sealed to both the membrane and the supporting layer as set forth in present claim 17, with an additional layer provided such that the upper is coupled to the membrane by way of a layer which provides a means for hermetic high-frequency welding as set forth in claim 32, and with the tread hermetically sealed to the membrane about a periphery of the at least one macroportion as set forth in claim 51.

As also discussed during the interview, the present dependent claims include numerous features which are not disclosed or suggested by the cited references. For example, claims 19, 36, 37, 45 and 58 recite the presence of an additional support layer for supporting the membrane. Because these claims recite an additional support dedicated to supporting of the membrane, these claims provide a further basis for distinguishing the WO '326 reference, such that the protective layer 106 of the '326 reference which is provided for protecting the

¹ During the interview, the Examiner also requested clarification or discussion of the recitation of "at least one supporting member" set forth in claim 51. Claim 51 recites a supporting layer which, by way of example, corresponds to layers as shown at 11 or 111 in the present specification. In addition, a support member is provided on the supporting layer, and within the macroperforation of the tread. By way of example, two examples of such supporting members are described in the present specification. For example, figure 2 provides a supporting member 16a in form of cross-members (cross-members are also set forth in dependent claims 55 and 57), which are provided on the supporting layer 11, and within the macroperforations 16. Another example of support members provided on the supporting layer is shown in figure 8, in which protrusions 115b are provided on the supporting layer 111 and within the macroperforation 116 (protrusions are set forth in dependent claims 52 and 53).

membrane should not be confused with the arrangement of the present invention which provides a supporting layer which supports the shoe, and yet a separate supporting layer for supporting the membrane.

In addition, dependent claims 18, 35, 39, and 60 recite that the supporting layer includes a mesh which is also not suggested by the cited references in combination with the features of the claims from which claims 18, 35, 39 and 60 depend.


Further, dependent claims 23, 35, 42, 64, 65 and 67 recite that the tread is joined through or penetrates through the supporting layer in order to seal to the membrane. The cited references fail to disclose or suggest such additional features, particularly in combination with the features of the independent claims.

Finally, new claims 70 and 71 recite the presence of a protective layer in addition to a supporting layer, such that the protective layer of the '326 reference cannot be simultaneously considered as both a protective layer and a separate supporting layer. As noted earlier, by way of example, the present specification describes a protective layer 110a as a layer separate from that of the supporting layer 110 (see p. 6 of the present specifications, particularly lines 12 and 25-27).

For the foregoing reasons, it is respectfully submitted that this application is now in condition for allowance. The cited references fail to disclose or suggest the combined features set forth in each of the independent claims, or numerous additional features set forth in each of the dependent claims. However, the Examiner is encouraged to contact Applicants' undersigned representative if any clarification or additional amendments would be considered helpful in advancing prosecution. Accordingly, should the Examiner deem that any further action is necessary to place this application in even better form for allowance, he is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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